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December 31, 2003

BY FEDERAL EXPRESS

Docket No. 03-080-1
Regulatory Analysis and Development
PPD, APHIS, Station 3C71
4700 River Road, Unit 118
Riverdale, MD 20737-1238
U.S.A.

Re: Submission of Comments
Picture Butte Group
Our File No.: 9964-6

Dear Sirs:

Please find enclosed an original and three copies of a submission commenting on the APHIS/USDA Proposed Rule Docket No. 03-080-1 "Bovine Spongiform Encephalopathy; Minimal Risk Regions and Importation of Commodities" which we have prepared on behalf of the Picture Butte Group.

Yours truly,

GOTTLIEB & PEARSON

Per:



Michael G. Woods

MGW/lap
Encl.

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SUBMISSION OF COMMENTS ON
PROPOSED RULE - DOCKET NO. 03-080-1

TO THE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS)
U.S. DEPARTMENT OF AGRICULTURE

*Bovine Spongiform Encephalopathy;
Minimal Risk Regions and Importation of Commodities*

Submitted on behalf of:

The Picture Butte Group
December 31, 2003

Gottlieb & Pearson
Barristers and Solicitors
2020 University Street, #1600
Montreal, Quebec H3A 2A5
CANADA

Per: Michael G. Woods

*There is no reason to believe that there is any food safety risk with Canadian Beef."*¹

*I plan to serve beef for my Christmas dinner. And we remain confident in the safety of our food supply.*²

*... it is important to recognize that [the] meat represents a minuscule risk ..."*³

*We're not talking about a U.S. industry or Canadian industry, but a North American industry.*⁴

*We must all hang together, or most assuredly we shall all hang separately.*⁵

Introduction

1. The following comments are submitted in response to the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture ("APHIS") *Proposed Rule to Allow Live Animal Imports from Canada*⁶ (the "Proposed Rule"). They are submitted on behalf of a group of feedlot operators based in Southern Alberta and referred to in this document as the "Picture Butte Group".⁷ The members are:

Butte Grain Merchants
Rick Paskal Livestock
Cor Van Raay Farms Ltd.
Nolan Cattle Company
John Vander Heyden Jr. Farms
Harry Duban Farms

2. The Picture Butte Group welcomes the current APHIS move towards a science-based and reasoned approach to the current bovine spongiform encephalopathy ("BSE") situation. It supports the Proposed Rule as a critical first step towards regularizing the North American market. Early implementation is crucial from a

¹ USDA Secretary Ann M. Veneman quoted in *The Globe and Mail*, July 11, 2003, p. A1.

² USDA, "Transcript of News Conference with Secretary Ann M. Veneman on BSE" December 23, 2003.

³ Dr. Ron DeHaven, "Transcript of Technical Briefing with Webcast with U.S. Government Officials on BSE Case", USDA Release No. 0444.03, December 27, 2003 ("DeHaven").

⁴ Alberta Premier Ralph Klein, "Klein calls for cooler heads to prevail", CBC report, December 29, 2003.

⁵ Benjamin Franklin, July 4, 1776, *The concise Oxford Dictionary of Quotations* (Oxford University Press, 2003).

⁶ Federal Register: November 4, 2003, Volume 68, Number 213, pp. 62386-62405, Docket No. 03-080-1 ("Proposed Rule").

⁷ Picture Butte, Alberta, is an area in the heartland of cattle country in southern Alberta, close to the border with the United States.

commercial perspective. Feedlot operators have invested in the North American market and rely upon continued access to the U.S. market to ensure their survival. From a policy perspective, early action on opening the border for fed cattle less than 30 months of age for immediate slaughter is essential for the effective implementation of a rational BSE policy that maintains consumer confidence while assuring that "minimal risk" regions will not be shut down for lengthy periods of time in the future.

3. The Picture Butte Group is committed to free trade and supports the Proposed Rule and the APHIS concept of a "**BSE minimal-risk region**".⁸ This is an approach that should be adopted on a global basis in a way that:
 - (i) ensures that BSE is not spread throughout the North-American continent;
 - (ii) underscores the importance of maintaining consumer confidence; and
 - (iii) sets the groundwork for an ongoing, managed and balanced approach for North America.
10. It is submitted that early action on implementing the Proposed Rule is the best way of addressing the need to demonstrate confidence in the highly integrated⁹ North American livestock market and lay out a road map from a rational approach to BSE. To date, assurances about the continued safety of American beef have been supported.¹⁰
11. Early implementation of the Proposed Rule reflects the understanding of the need to adopt a rational approach.

⁸ Proposed Rule, p. 62387.

⁹ DeHaven.

¹⁰ "Mad Cow in America", *The New York Times*, December 25, 2003.

*This phobic attitude (towards BSE) must end ... the leading beef-producing and -consuming nations of the world should now be expected to exhibit a rational appreciation of the disease's risks. No one disputes that trade should take a back seat to human health. But where Mad Cow is concerned, it is taking a back seat to hysteria.*¹¹

12. In this regard, we note Canada's measured approach to the recent discovery of BSE in the United States. Underlining Canada's confidence in the safety of North American meat, Agriculture Minister Bob Speller announced limited and temporary import restrictions. Canada's border remains open for products and animals which "on the basis of our scientific risk assessment and measures do not pose a risk to human health."¹² These products include:

- (i) boneless beef from cattle aged 30 months or less at slaughter;
- (ii) **live cattle destined for immediate slaughter; and**
- (iii) dairy products, semen, embryos and protein-free tallow.

13. The Picture Butte Group notes that the recent discovery of the incidence of BSE in Washington State appears to involve an animal that was approximately six-and-a-half years old at the time of slaughter and was born before bans on feeding rendered cattle products to other were implemented in North America - bans that have been effective in both Canada and the United States.¹³ As the Proposed Rule notes, levels of BSE-related infectious agents in certain tissues vary with the age of the animal. "Infectivity was not detected in most tissues until at least 32 months post exposure ... (even) infected animals less than 30 months old are unlikely to have infectious levels of the prion protein."¹⁴

¹¹ "Common sense on Mad Cow", *National Post*, Saturday, December 27, 2003, p. A13.

¹² Statement by The Honourable Bob Speller Minister of Agriculture and Agri-Food and Minister Responsible for the Canadian Food Inspection Agency, Ottawa, December 24, 2003, Government of Canada News Release, Canadian Food Inspection Agency ("CFIA") <http://www.inspection.gc.ca/english/corpaffr/newcom/2003/20031227e.shtml>.

¹³ USDA, "Transcript of Technical Briefing and Webcast with U.S. Government officials on BSE case", December 29, 2003.

¹⁴ Proposed Rule, pp. 62390-62391.

14. The 30-month limit is accepted internationally and, in BSE standards, it is consistent with OIE recommendations.¹⁵ In particular, livestock less than 30 months of age as set out in the Proposed Rule "... make it very unlikely that meal derived from bovines meeting those conditions would contain the BSE agent."¹⁶
15. The Picture Butte Group urges APHIS to take note of Canada's position and notes that the Proposed Rule permits the import of livestock under 30 months. Further, in order to encourage an orderly opening of the U.S. market in a way that maintains consumer and industry confidence, the Picture Butte Group submits that Canada should suggest opening the market in stages, as follows:
- (i) Entry of fed cattle aged 30 months or under for immediate slaughter;
 - (ii) Entry of bovine livestock over 30 months of age that have tested negative for BSE; and
 - (iii) Entry of feeder cattle aged 30 months and under based on harmonized rules established by Canada and the United States.
16. The Picture Butte Group encourages the NAFTA governments, and in particular Canada and the United States, to draw from the ongoing work and co-operation during the BSE-related experience and to work quickly towards harmonized rules. As we have noted, the North American beef market is already highly integrated and this integration has been beneficial to all stakeholders in the industry as well as North American consumers.
17. In this light, we note the U.S.-based National Cattlemen's Beef Association ("NCBA") is on record as supporting the principle of free trade as follows:

¹⁵ Ibid, p. 62391.

¹⁶ Ibid, p. 62393.

- all decisions on trade requirements be science-based;
- all standards agreed upon between the U.S. and other trade partners be equivalent for both international and domestic consumers of beef; and
- there be harmonization of animal health standards to allow the equitable flow of cattle (between Canada and the United States) in both directions.¹⁷

Background

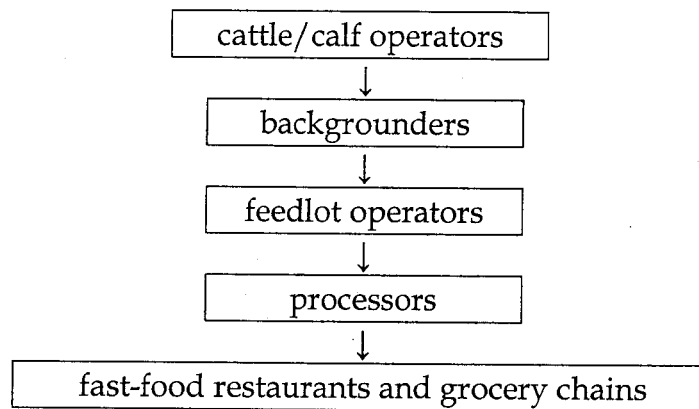
18. Feedlot operators occupy a strategic place in Canada's beef industry. They purchase cattle from cattle/calf operators and "backgrounders" and bear the commercial risk as they prepare the cattle for processing. The current U.S. ban on the import of livestock from Canada has created severe economic hardship and threatens to drive a vital source of livestock for the North American market out of business.
19. The Picture Butte Group members are part of a vital sector of Canada's beef industry which has been hit particularly hard by the U.S. ban on imports of livestock from Canada.
20. The Canadian beef industry has been hit extremely hard by the U.S. border closure. A recent Statistics Canada report has indicated that, during the first nine months of 2003, revenues from the sale of cattle and cows fell by more than \$2 billion (Canadian) or 37 percent from the previous year. During the third quarter, revenues fell 73 percent from \$1.8 billion to \$500 million. The reported indicated that Alberta was by far the most affected province¹⁸

¹⁷ Eric Davis Editorial: Canadian Import Situation, National Cattlemen's Beef Association (NCBA), 08/18/2003 ("Eric Davis Editorial"). In the context of increased harmonization, it is the view of the Picture Butte Group that Canada addresses its restrictions on U.S. livestock based on blue tongue/anaplasmosis.

¹⁸ *Statistics Canada: Mad cow disease and beef trade*, No. 11-621-No. 005, November 2003 ("Statistics Canada"). See also Wilson, Barry, "Canada penalized for honesty on BSE case", *The Western Producer*, December 4, 2003.

21. The Statistics Canada report noted that the import prohibitions as an important factor in a "strained U.S. market".¹⁹ The economic impact is affecting the North American market including U.S. processors and consumers who are cut off from an import source.
22. Feedlot operators have been hit harder than any other segment of the Canadian beef industry. Due to the closing of the U.S. border to livestock, our clients can only sell to Canadian-based processors. Caught between the cattle/calf producers and the processors, they have shouldered a particularly heavy burden in terms of ongoing economic loss. They risk being forced out of business after investing millions of dollars in becoming integrated into the North American market.
23. The Canadian livestock industry is made up of four components. Over 80,000 cattle/calf operators sell their livestock to feedlot operators and "backgrounders". The approximately 1,000 feedlot operators prepare the cattle for the next step in the process.
24. When the animals are ready, they are sold to processors who slaughter them and prepare the meat for market. The fast-food restaurants are large players in the consumer market along with grocery chains. Beef production begins with cow-calf operators who raise calves for the industry. On most farms, the cow-calf process takes place exclusively outside on open pasture where the cattle graze and calves nurse until they reach a weight of 500 to 600 pounds.
25. After weaning, calves are "over-wintered" on hay-based diets until their weight increases to about 800 pounds. This phase is known as "backgrounding".
26. In summary, the structure of the market is set up as follows:

¹⁹ Ibid.



27. When the U.S. border was closed:
- (a) the processors had an inventory of one week to ten days and were able to adjust quickly to the changed marketplace. They were able to carry forward their losses and continue to benefit from North American prices in Canada;
 - (b) cattle/calf operators were able to adjust as well and have been able to realize 90 percent to 110 percent of last year's income to date; and
 - (c) the feedlot operators who hold the largest investment in the business faced the major consequence of the BSE ban as they were left with large inventories that could no longer be shipped to U.S. processors.
28. Feedlot operators have borne the brunt from the outset.
29. Since the beginning of the "free trade" era, feedlot operators have depended upon direct sales to processing facilities in the U.S. and some of them sell over 90% of this livestock to the U.S. Access to the four to six processors in the U.S. allows feedlot operators to take advantage of a competitive North American market. In the context of Alberta, access to these U.S. processors across the border is critical. As a result of the FTA, NAFTA and related factors, a truly integrated North American market exists for livestock and beef products. There is price which is

determined largely by U.S. demand. Canadian production has grown to help respond to this demand.

30. While partial openings to most Canadian beef products have helped Canadian cattle/calf producers and Canadian processors mitigate some of their losses, it has done little for the feedlot operators who still face going out of business if the current ban on livestock is not lifted soon.

The Proposed Rule - General Comments

31. The Picture Butte Group supports the APHIS recognition of a "minimal risk region" for BSE and of Canada as a "minimal risk region".²⁰
32. The Picture Butte Group is dedicated to the twin principles of the health and safety of the North American beef market and the need to do so within the context of the principles of free trade which underscore the Canada-U.S. economic/commercial relationship. The APHIS Proposed Rule demonstrates that it is not only possible to embrace both principles, but also that it is the most effective way of maintaining consumer confidence, as well as the viability, competitiveness and efficiency of the domestic North American beef industry.
33. In particular, we support the APHIS statement that

*The proposed minimal risk region would includes regions in which an animal has been diagnosed with BSE but in which specific preventive measures have been in place for an appropriate period of time that reduce the risk of BSE being introduced to the United States. Based on a comprehensive risk analysis and review, the USDA believes that the surveillance, prevention and control measures implemented by Canada are sufficient to be included in the minimal risk category.*²¹

²⁰ Proposed Rule, op. cit., p. 62386.

²¹ See *USDA Issues Proposed Rule to Allow Live Animal Imports from Canada*. USDA, News Release No. 0372.03, October 31, 2003.

34. In its document, APHIS reviews the measures that Canada has taken before and since the identification of the isolated case of BSE, namely:²²
- (i) stringent import restrictions since 1990;
 - (ii) careful and effective surveillance for BSE since 1992 which exceeds OIE recommendations;
 - (iii) effective enforcement of a feed ban on most mammalian protein ruminants since 1997, a ban that exceeds minimum necessary measures;
 - (iv) an extensive epidemiological investigation after the isolated case; and
 - (v) additional risk-mitigation measures including culling and testing animals 24 months of age or older.
35. The most important step in the context of the current crisis is the next step. It is submitted that failure to act quickly to put the Proposed Rule into effect will exacerbate the effect of current trade barriers, and put the future of free trade in beef and other products into question.
36. It is further submitted that failure to act quickly and decisively will undermine the hard work and efforts of both the Canadian and United States governments in dealing with the current situation in a practical, effective way, a way that sets a much needed precedent in how countries will deal with the BSE issue in the future.
37. The Picture Butte Group submits that the Proposed Rule's assessment of Canada as a minimal risk country is consistent with the OIE's *Terrestrial Animal Health Code* (the "Code") based on primary criteria that there has been less than one in a

²² Proposed Rule, pp. 62389.

million cases of BSE in each of the last four consecutive 12-month periods within the cattle population over 24 months of age."²³

38. In addition, pursuant to the OIE Code, Canada has in place:²⁴
- (i) a ban on feeding ruminants and rendered ruminant products effectively enforced since 1997;
 - (ii) Meal-and-bone-meal (MBM) or greaves of ruminant origin has not been imported from any country affected by BSE since 1978;
 - (iii) an ongoing education and awareness program targeting veterinarians, producers, and workers since 1989;
 - (iv) compulsory notification and investigation of cattle showing clinical signs compatible with BSE since 1990;
 - (v) a surveillance program for BSE since 1992; Canada has met or exceeded OIE surveillance targets aimed at where BSE is present for each of the last seven years; and
 - (vi) a program under which all samples collected as part of the surveillance program are examined in a laboratory approved by the Government of Canada.
39. We note that Canada invited a team of internationally recognized BSE experts to review its response to the detection of BSE in an indigenous animal. They were impressed with the comprehensive scope, level of analysis and thoroughness of the investigation.²⁵

²³ CFIA Report "Canada: a minimal BSE risk country", October 2003. See also CFIA Report "Narrative Background to Canada's assessment of a response to the BSE occurrence in Alberta" ("Narrative Background"), July 2003.

²⁴ Ibid.

²⁵ "Report on Actions Taken by Canada in Response to the Confirmation of an Indigenous Case of BSE", Bern, Switzerland, 26 June 2003. See <http://www.inspection.gc.ca/english/anim/hasan/disemala/bseesb/internat.shtml>

It is important to acknowledge that measures previously in place achieved their designed outcome as demonstrated by the identification of the positive animal in a manner which precluded its entry into the human food chain. Furthermore, the various risk management measures implemented by Canada over a number of years have reduced the risks of spread and amplification of the disease.

40. The international experts noted that "BSE is not a contagious disease."²⁶
41. Canada noted the international experts' acknowledgement of the measures it had already put in place. Canada also responded quickly to their recommendations to enhance Canada's approach. This included:
- (i) The implementation of a prohibition on SRMs from human food and animal feed chain;
 - (ii) A review of the existing mammalian to ruminant feed ban to determine if even more stringent measures are required; and
 - (iii) A review of the number of animals tested with a focus on the highest risk cattle including neurological cases, dead stock, downers, dying and diseased animals.²⁷
42. The Picture Butte Group also recalls the joint Canada, United States and Mexico *demarche* to the OIE in August 2003. The objective was to encourage a more current, practical, risk-based approach to BSE. The joint letter underscored the need to reassure consumers around the world of the safe food supply and to avoid adverse economic impact on a country with strong safeguards in place.²⁸

²⁶ Ibid.

²⁷ Narrative Background.

²⁸ News Releases, CNN, August 25, 2003. See also Agriculture and Agri-Food Canada, August 25, 2003

43. The *demarche* concluded by pointing out that it is imperative to move quickly so that countries will have confidence to trade in animals and animal products in spite of the possibility of isolated cases of BSE in the future.²⁹
44. Given the steps Canada has taken since May 20, 2003, the continued ban on imports of Canadian livestock under 30 months of age cannot be justified. The Group has supported the Government of Canada in the steps it has implemented with respect to enhanced surveillance on feed restrictions including the exclusion of specified risk materials. Canada's measures have strengthened its case for minimal risk. This obviously addresses consumer confidence in Canada. The Group considers that the U.S. should be invited to consider the issue of "consumer confidence" in the larger context of consumer confidence.
45. It is submitted that the implementation of the Proposed Rule will bolster the confidence of consumers. If beef export producing and exporting nations cannot be seen to take a reasoned and balanced approach, the level of consumer concern will increase and public trust will drop. A "common sense" approach must be followed that separates "minimum risk" countries from those that do not have proven surveillance mitigation systems in place.
46. The Picture Butte Group supports the APHIS approach and urges U.S. authorities to implement the Proposed Rule as soon as possible. This will defuse a significant trade irritant and lay the groundwork for further progress. APHIS sets out a useful precedent both in the control of BSE and other agricultural matters on the basis of a sound and reasoned "risk assessment" approach.

²⁹ Ibid. The USDA Delegate to OIE is quoted by Dow Jones that an outbreak of BSE "shouldn't be the end of the world. We're trying to find ways that countries find a means to continue to trade."

Proposed Rule – Comments on Specific Points

47. The Picture Butte Group submits that fed cattle under 30 months of age represents minimal risk and suggests that implementation of the Proposed Rule could be facilitated by a staged approach as follows:
- (iv) Entry of fed cattle aged 30 months or under for immediate slaughter;
 - (v) Entry of bovine livestock over 30 months of age that have tested negative for BSE; and
 - (vi) Entry of feeder cattle aged 30 months and under based on harmonized rules established by Canada and the United States.
48. The Picture Butte Group supports the requirement to remove Specified Risk Materials ("SRMs") for live bovine animals less than 30 months of age.
49. The Picture Butte Group submits that, as the Proposed Rule identifies Canada as a "minimal risk region", APHIS should consider that risks associated with BSE can be managed effectively by removing SRMs. For animals that are not known to have been fed ruminant proteins prohibited under the feed ban, risk is effectively mitigated by the removal of SRMs.
50. The Picture Butte Group notes that, under the Proposed Rule, the relevant requirement would be for the removal of the intestine. It is submitted that the risk associated with BSE can be effectively reduced by the removal of the *distal ileum*, the only part of the intestine in which infectivity has been demonstrated.
51. The Picture Butte Group submits that the requirement for the removal of the entire intestine is an unnecessary and restrictive one which does not affect risk in any way.

52. As set out above, it is submitted that the matter of live bovine animals over 30 months of age should be addressed separately. The Picture Butte Group encourages Canada and the United States to conclude a joint risk assessment with a view to working out a harmonized approach. This process should follow and draw upon early action on animals under 30 months of age.
53. The Picture Butte Group also refers to the requirement set out in the Proposed Rule requiring a veterinary certificate for live bovines and animal products to the effect that "the animals are not known to have been fed ruminant protein other than milk protein, during their lifetime."³⁰
54. It is submitted that shipment-specific certification is an onerous requirement and matters with respect to the ruminant-to-ruminant feed ban should be addressed through an exchange between Canadian and U.S. Veterinary officers.
55. The Picture Butte Group encourages APHIS to work more closely with the Canadian Food Inspection Agency (CFIA) and the *Servicio Nacional de Sanidad, Inocuidad y Calidad Agroalimentarias* of Mexico towards the early adoption of a NAFTA-wide, universal tagging and registry system. It will greatly assist BSE mitigation and the maintenance of consumer safety and cross-border trade.

The Free Trade Approach

56. In addition, we recall that the OIE has urged countries to avoid "unjustified sanitary barriers." In light of the fact that the one isolated case in Canada has not had any impact or consequence on the health or safety of Canadian beef and that the isolated case was dealt with quickly and effectively, we recall the OIE statement:

"It is apparent that some member countries are applying trade bans when an exporting country reports the presence of a significant disease without consulting the

³⁰ Proposed Rule, p. 62392.

*recommendations of the code or conducting a risk analysis in accordance with its obligations."*³¹

57. As set out above, the Picture Butte Group supports free trade in the North American beef industry. Since the coming into effect of the Canada-U.S. Free Trade Agreement ("FTA") and the North American Free Trade Agreement ("NAFTA"), feedlot operators have invested millions of dollars and countless hours of work to become a key part of the North American market.
58. It is further submitted that speedy and effective enactment of the APHIS Proposed Rule is essential in the light of the applicable rules under both NAFTA and World Trade Organization ("WTO") obligations. Under both the WTO's GATT 1994 and NAFTA's import restrictions such as the one currently in effect on livestock are prohibited. They can only be justified if "necessary" to protect human, animal or plant life.³²
59. The trade rules take on further precision under the WTO Agreement on Sanitary and Phytosanitary Measures ("SPS Agreement") and NAFTA Chapter 7 on Agriculture which require that such import restrictions must be:
- based on a scientific risk assessment;
 - introduced in a way that minimizes negative trade effects;
 - not maintained as a disguised trade restriction.
60. The Picture Butte Group urges U.S. officials to consider NAFTA obligations with respect to sanitary and phytosanitary measures under Section B of Chapter 7. The scope and coverage of these provisions are substantively based on the WTO SPS Agreement.³³ NAFTA Article 712: (5)-(6) contains the basic discipline on the

³¹ *World Trade Organization: Implementing the standards of the OIE - Communication from the OIE*, G/SPS/GEN/437, 28 October 2003.

³² GATT 1994 Article III, Article XX, NAFTA Article 309.

³³ *Sanitary or phytosanitary measure means a measure that a Party adopts, maintains or applies to:*

use of sanitary and phytosanitary measures, and largely echoes the GATT 1994 Article XX standard. It provides that:

*Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is **applied only to the extent necessary to achieve its appropriate level of protection**, taking into account technical and economic feasibility.*

*No Party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, **creating a disguised restriction on trade between the Parties**.*³⁴

(emphasis added)

61. As with the SPS Agreement, a risk assessment is required. Article 715 sets out the factors to be taken into account in a risk assessment:

1. *In conducting a risk assessment, each Party shall take into account:*
 - a) *relevant risk assessment techniques and methodologies developed by international or North American standardizing organizations;*
 - b) *relevant scientific evidence;*
 - c) *relevant processes and production methods;*
 - d) *relevant inspection, sampling and testing methods;*
2. *e) the prevalence of h 1, each Party shall, in establishing its appropriate level of protection regarding the risk associated with the introduction, establishment or spread of an animal or plant pest or disease, and in assessing the risk, also take into account the following economic factors, where relevant:*
 - a) *loss of production or sales that may result from the pest or disease;*
 - b) *costs of control or eradication of the pest or disease in its territory; and*
 - c) *the relative cost-effectiveness of alternative approaches to limiting risks.*
3. *Each Party, in establishing its appropriate level of protection*
 - a) *should take into account the objective of minimizing negative trade effects; and*
 - b) *shall, with the objective of achieving consistency in such levels, avoid arbitrary or unjustifiable distinctions in such levels in different circumstances, where such distinctions result in arbitrary or unjustifiable discrimination against a good of another Party or constitute a disguised restriction on trade between the Parties.*³⁵

-
- (a) *protect animal or plant life or health in its territory from risks arising from the introduction, establishment or spread of a pest or disease,*
 - (b) *protect human or animal life or health in its territory from risks arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage or feedstuff,*
 - (c) *protect human life or health in its territory from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof, or*
 - (d) *to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.*

³⁴ North American Free Trade Agreement, <http://www.nafta-sec-alena.org/english/index.htm>, Article 712: (5)-(6).

³⁵ Ibid, Article 715.

62. Under these provisions, it is necessary for Canada to prove that the restriction is necessary to address any identified risk. Canada has a further obligation to use international standards in establishing its sanitary and phytosanitary measures (Article 714).

1. *Without reducing the level of protection of human, animal or plant life or health, the Parties shall, to the greatest extent practicable and in accordance with this Section, pursue equivalence of their respective sanitary and phytosanitary measures.*
2. *Each importing Party:*
 - a) *shall treat a sanitary or phytosanitary measure adopted or maintained by an exporting Party as equivalent to its own where the exporting Party, in cooperation with the importing Party, provides to the importing Party scientific evidence or other information, in accordance with risk assessment methodologies agreed on by those Parties, to demonstrate objectively, subject to subparagraph (b), that the exporting Party's measure achieves the importing Party's appropriate level of protection;*
 - b) *may, where it has a scientific basis, determine that the exporting Party's measure does not achieve the importing Party's appropriate level of protection; and*
 - c) *shall provide to the exporting Party, on request, its reasons in writing for a determination under subparagraph (b).³⁶*

63. The Picture Butte Group submits that the Proposed Rule is a vital step towards WTO and NAFTA compliance. It emphasizes the temporal nature of those obligations and the need to take decisive and speedy action to lift the ban on import of livestock from Canada. The USDA has conducted a scientific risk assessment and should move quickly on its implementation. This will ensure WTO and NAFTA compliance. Speedy implementation is critical to maintaining confidence in the North American beef market.

64. The Proposed Rule, if quickly and effectively applied, will set the stage for improved discipline in the North American market. We recall that pursuant to the applicable trade law jurisprudence, if current restrictions remain in place, they could be challenged as a "disguised restriction" of international trade.

³⁶ Ibid, Article 714.

65. As stated above, the Picture Butte Group supports the NCBA statements in the context of free trade. It submits the early enactment of the Proposed Rule is the best way of setting the stage for further progress on the BSE issue and the increased harmonization of the trade rules for the already integrated North American beef market.

Conclusion

66. The Picture Butte Group supports the Proposed Rule. This submission includes suggestions on how it could be adjusted with a view to improving its overall effectiveness. However, the most important point is quick and decisive action to open the border to fed cattle aged 30 months or under for immediate slaughter.
67. Action on this point is vital as it signals confidence in the key element of the North American beef market to North American and world consumers. It also signals a recognition of the great progress we have made in addressing BSE since the 1980s and the significant work that has been done on this issue since May 2003.
68. In this light, the Picture Butte Group notes the recent announcement by U.S. Secretary Anne Veneman of additional safeguards in response to recent events.³⁷ This "mirrors"³⁸ the Canadian response and we also note that the U.S. is following Canada's example in appointing a panel of international experts with a nearly-identical function.
69. We urge APHIS to continue to work closely with the CFIA toward establishing an integrated North American response that reflects the nature of our continental beef market.

³⁷ USDA, "Transcript of Agriculture Secretary Ann M. Veneman Announcing Additional Protection Measures to Guard Against BSE", Washington, D.C., December 30, 2003.

³⁸ Statement by The Honourable Bob Speller Minister of Agriculture and Agri-Food and Minister Responsible for the Canadian Food Inspection Agency, Ottawa, December 30, 2003, Government of Canada News Release, Canadian Food Inspection Agency, <http://www.inspection.gc.ca/english/corpaffr/newcom/2003/20031230e.shtml>.

70. The recent incident does not justify shutting down the trade in U.S. livestock either in the national or North American context.
71. The Picture Butte Group notes that Canada properly maintained an open border. For trade in fed cattle under 30 months of age, the border should be open in both directions. There is no reason to maintain the current prohibition.
72. In conclusion, we cite a recent NCBA statement in the context of the principles of free trade:

*Some people, because of political motives or the belief that reduction in beef supplies is bolstering the U.S. market, would prefer that the border be closed indefinitely. That's worse than the action of a bad neighbor: it's unrealistic and could come back to haunt us in the future . . . We cannot forget the golden rule - do unto your trading partners as you would have your trading partners to do unto you."*³⁹

³⁹ Eric Davis Editorial. In this light, the Picture Butte Group supports Canadian action to implement a science-based approach to the blue tongue and anaplasmosis issue. It will be responding to the CFIA's Discussion Paper "Policies on the Importation of Restricted Feeder Cattle from the United States" with a view to supporting a science-based approach that would open the market on a year round basis while addressing any risks.